

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA

v.

Case No. 22-cr-00103-jdp

LAZEREK B. AUSTIN,

Defendant.

GOVERNMENT’S SENTENCING MEMORANDUM

The United States of America, by Timothy M. O’Shea, United States Attorney for the Western District of Wisconsin, by Corey C. Stephan, Assistant United States Attorney for that district, hereby submits this sentencing memorandum.

1. Nature and Circumstances of the Offense

On May 31, 2022, the defendant was convicted in Dane County Circuit Court case number 21CF118 of the felony crime of operating a motor vehicle without owners consent. (Dkt. 29 “PSR,” ¶ 22). In the sentencing transcript the defendant acknowledges a maximum penalty of three years and six months in prison. The Wisconsin Circuit Court Access Program (CCAP) indicates that sentencing was scheduled for July 20, 2022, but that the defendant did not appear and a body only warrant was issued for his arrest.

During this time Fitchburg police detectives were monitoring the social media activities of a local street gang or clique named “My Brother’s Keeper” (MBK). (PSR, ¶

11). They noted a string of retaliatory violence between MBK and another local street gang, as well as another clique. Detectives became familiar with many of these gang members, including the defendant. While the defendant objects to the characterization that he was in MBK, he admits to continuing association with others involved in the gang.

Detectives found several photographs and videos of the defendant in possession of firearms. (PSR, ¶ 12). He was depicted holding multiple guns, pointing guns at the camera, and in other photos he had guns in cars. These photographs and videos of the defendant were posted to social media between July 20, 2022 and August 17, 2022 while he had a warrant after being released on bail in a state case with a condition not possess a dangerous weapon.

The defendant was in one specific video that was posted by a known MBK associate. (PSR, ¶ 13). The defendant is seen dancing outside of a vehicle that was in a parking lot. The defendant is holding a semiautomatic handgun with an extended magazine and “switch” on it, and he tucks it into his waistband. (Exhibit 1, Bates 316).

On August 14, 2022, detectives saw several photographs uploaded to the defendant’s Snapchat account that were taken two days earlier based on the camera roll. (PSR, ¶ 14). One shows the defendant holding five handguns. Each of these handguns has an extended magazine, some of which are clear and clearly show rounds of ammunition loaded into them. (Exhibit 2, Bates 307).

On August 15, 2022, the defendant is seen in a video posted to Snapchat in the passenger seat of a car holding a handgun with extended magazine and attached

weapon light. (PSR, ¶ 15). The geotag on the video is in Chicago, Illinois.

The next day, on August 16, 2022, detectives found a video posted to Snapchat that was taken one month earlier. (PSR, ¶ 16). In it the defendant is seen holding a tan handgun with green laser and extended magazine, which he points at the camera.

On August 17, 2022, the defendant is seen in a video holding a handgun (the charged FN Herstal Five-seveN) upside down by the grip. (PSR, ¶ 17; Exhibit 3, Bates 310).

On August 19, 2022, detectives then tracked the defendant down because he was wanted on active warrants for failing to appear in Dane County criminal cases. (PSR, ¶ 18). They found him staying in his girlfriend's sister's apartment in Madison. Pursuant to a search warrant, in the apartment in a box of Ugg boots they found the loaded FN Herstal Five-seveN handguns. (Exhibit 4, Bates 50). The tenants denied owning the gun, and the defendant's DNA matched swabs taken from the gun.

When officers initially did a knock and announce at the apartment, the defendant exited a sliding door, and looked to be contemplating jumping from the elevated patio. When officers gave him verbal commands, he re-entered the apartment and was taken into custody.

The defendant was interviewed right after his arrest, denied any knowledge of the FN handgun, and said his DNA would not be on it. He was shown several photos of himself posing with firearms on social media and explained that "not all of those guns were his." The detective surmised that because someone thought that the defendant killed someone (which he acknowledged but insisted he had nothing to do

with), that he had to keep a gun with him for protection. The defendant responded, “Exactly bro, exactly.”

As to the photo of him holding five handguns, the defendant said that the guns belonged to several other people and that he holds them just so he looks good in social media. The detective asked him if it was so he looked like a “badass,” and the defendant started laughing and said “Yeah.” When he was shown another photo of him holding a gun, he said he started to laugh and said that he had “gotten turned up” on his birthday. As to a video of him holding a firearm in his lap, he began to reenact the dance that he did in the video and asked how police had gotten copies of those videos.

Detectives also completed a partial extraction of the defendant’s phone. (PSR, ¶ 19). In it they found a number of images and videos of the defendant with firearms including the following:

- A video and images of the defendant with a handgun with tactical light and extended magazine in one hand, and an AR15 in the other hand.
- A photograph of a Glock 19 handgun with tan tactical light, clear extended magazine with ammunition visible, and a switch on the rear of the slide.
- A photo of the defendant smoking what appears to be a marijuana blunt with a firearm magazine visible between his legs.
- A photograph of the defendant and Aidan Johnson¹. They are both holding

¹ On May 2, 2023, Aidan Johnson was sentenced by this Court to 30 months imprisonment for possession of a stolen handgun. (See 22-cr-019-jdp, Dkt. 33).

handguns (Exhibit 5, Bates 601).

- A photo of the defendant in the rear seat of a car holding a tan handgun with clear extended magazine and tactical light. The defendant has a large amount of U.S. currency on his lap.
- A photo of the defendant holding a rifle with the barrel pointed at the camera.
- A photo of the defendant wearing a ski mask and holding an AR15 rifle, with a creation date of July 20, 2022.
- A photo of the defendant holding what appears to be an MPA30T firearm, with a creation date of July 18, 2022. (Exhibit 6, Bates 630).
- A photo of a table with firearm with four handguns (one with a switch) and a Draco AK-variant firearm.
- A photo of the defendant wearing sunglasses with what appears to be the Draco AK-variant firearm, with a creation date of August 3, 2022. (Exhibit 7, Bates 633).
- Multiple photos consistent with drug use and dealing, which depict marijuana and pills identified by markings are oxycodone.
- A series of photos with the defendant holding two handguns (one with a tactical light and laser) and an AR15. (Exhibit 8, Bates 610).

Also on the phone is a conversation where it appears that the defendant is trying to sell a firearm to someone. (PSR, ¶ 20). While he initially says he has no “pipes” for sale, he later says he has a “G2” for \$500.

2. The History and Characteristics of the Defendant

The defendant is 19 years old and was immersed in a world of using guns to gain social media and street credibility. While he argues that he was not “in” the gang, the government would argue that if you hang out with gang members, and engage in gang related activity (guns, drugs, social media posturing), the difference is one without distinction.

The defendant was brazen in his behavior, opening brandishing firearms in parking lots and carrying guns in vehicle while presumably traveling around Madison and Chicago. His actions were threatening, dangerous, and increasing the potential of a violent gun confrontation. He also admitted to possessing a gun for protection because other thought that he had committed a homicide.

This is a sad reality for a young man who had an unfortunate upbringing. Yet it is one that he came to through his own choices, despite a period of stability he was given by living with a former guidance counselor as he transitioned into high school.

The defendant described those in his life who have died or been incarcerated, and said that he was shot in the chest in January of 2022. (PSR, ¶¶ 70 and 73). But his response was not to distance himself from this world as he suggested. It was to continue to immerse surround himself with guns, drugs, money, crime, and other people who shared the same lifestyle. Assessing his purported gang activity by these objections measure, he would appear to qualify as gang-involved.

3. The Need for the Sentence Imposed

The government agrees with the conclusions in the Revised PSR (Dkt. 29) that

the defendant possessed between 8 and 24 firearms for an offense level enhancement. (PSR, ¶ 28; Dkt. 30 “Addendum”). The following firearms were possessed after he was convicted of a felony (as demonstrated by the file stamps), making him a prohibited possessor. Specifically, they are as follows:

- Five handguns: See Exhibit 2, Bates 307.
- Firearm similar to an MPA30T: See Exhibit 6, Bates 630.
- AK-variant: See Exhibit 7, Bates 633.
- Two handguns and one AR15: See Exhibit 8, Bates 610; Exhibit 9, Bates 626.

The defendant has demonstrated that he will continue to possess guns, regardless of arrest, prosecution, conviction, and the threat of incarceration. The sentence in this case must be sufficient to protect society, hold him accountable for this dangerous, and impress upon him that once released he has to stay away from guns and his gang associates.

4. Conclusion

For these reasons, the government respectfully recommends that a lengthy period of incarceration consistent with the advisory sentencing guideline range of 41 to 51 months is appropriate in this case.

Dated this 31st day of May 2023.

Respectfully submitted,

TIMOTHY M. O'SHEA
United States Attorney

By: /s/
COREY C. STEPHAN
Assistant United States Attorney